

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

IN RE: ETHICON, INC.
PELVIC REPAIR SYSTEMS
PRODUCTS LIABILITY LITIGATION

MDL 2327

THIS DOCUMENT RELATES TO CASES
IDENTIFIED ON EXHIBIT A

**PRETRIAL ORDER # 346
(Docket Control Order – Ethicon, Inc. Wave 13 Cases)**

The court **ORDERS** that Pretrial Order (“PTO”) # 341 is **AMENDED** to correct a typographical error in Paragraph A (Scheduling Deadlines).¹ The remaining provisions related to Wave 13 remain in effect and are set forth again below. The court **ORDERS** as follows for the cases on Exhibit A:

1. The cases are no longer eligible for placement or return to the inactive docket nor may notices of settlement be filed to relieve the parties from these scheduling deadlines;

2. To the extent any other defendants are named in the cases on Exhibit A, the deadlines below also apply to them; and

3. The following deadlines immediately apply in all Wave 13 cases with *one important exception. If the parties in any of these cases have previously filed dispositive and/or Daubert motions, the parties may not file or refile dispositive or Daubert motions without first seeking leave of court for good cause shown. It is not the court’s intention to allow a new round of pleadings or a second bite at the apple for cases already worked up in previous waves.*

¹ The court has removed cases from the original Exhibit A that have since closed.

A. SCHEDULING DEADLINES. The following deadlines shall apply in all Ethicon Wave 13 cases:

Plaintiff Fact Sheets. ²	07/01/2019
Defendant Fact Sheets. ³	07/11/2019
Deadline for written discovery requests.	08/09/2019
Expert disclosures served by plaintiffs pursuant to Fed. R. Civ. P. 26 as limited by ¶ 3.a. of this order.	10/08/2019
Expert disclosure served by defendants pursuant to Fed. R. Civ. P. 26 as limited by ¶ 3.a. of this order. ⁴	11/07/2019
Expert disclosure served for rebuttal pursuant to Fed. R. Civ. P. 26 as limited by ¶ 3.a. of this order.	11/14/2019
Deposition deadline and close of discovery.	12/13/2019
Filing of dispositive motions.	12/20/2019
Response to dispositive motions.	01/03/2020
Reply to response to dispositive motions.	01/10/2020
Filing of <i>Daubert</i> motions.	12/20/2019
Responses to <i>Daubert</i> motions.	01/03/2020
Reply to response to <i>Daubert</i> motions.	01/10/2020

1. **Completion Date.** The last date to complete depositions shall be the “discovery completion date” by which all discovery shall be completed.

2. **Limitations on Interrogatories, Requests for Admissions and Depositions.** The following limitations apply:

- a. Each defendant⁵ is limited to 10 interrogatories, 10 requests for production of documents and 10 requests for admission per case.

² The court reminds plaintiffs who have named additional MDL defendants other than the Ethicon-related defendants to serve a defendant-specific Plaintiff Fact Sheet as required in that particular defendant’s MDL.

³ Where plaintiffs have named multiple defendants (i.e., C. R. Bard, Inc., and Ethicon, Inc., Boston Scientific Corp., etc.), each defendant must serve a Defendant Fact Sheet using the form agreed to in that defendant’s MDL.

⁴ Paragraph 3.a. of this order states the “the plaintiffs and each defendant are limited to no more than five (5) experts per case (exclusive of treating physicians).”

⁵ In referring to the “defendant” or “defendants” throughout this order, it is my intention that a defendant(s) includes the defendant and its related entities, i.e., Ethicon, Inc. and Johnson & Johnson are related entities and treated as one

- b. Plaintiffs are limited to 10 interrogatories, 10 requests for production of documents and 10 requests for admission to each defendant.
- c. In each individual member case, no more than 4 treating physicians may be deposed.⁶
- d. Depositions of plaintiff's friends and family members may be taken at any time prior to trial provided the deposition is requested before the discovery completion date.
- e. The Deposition of any witness is limited to 3 hours absent agreement of the parties.
- f. The court will consider modifications to the above limitations only upon good cause shown.

3. **Limitations on Experts.** The following limitations related to experts apply:

- a. The parties may conduct general and specific expert discovery on all products at issue in this Wave. In light of the products involved in this Wave, the likelihood of overlap in expert opinion from one case to another (except as to specific causation) and the need to streamline discovery in these cases, **the plaintiffs and each defendant are limited to no more than five experts per case (exclusive of treating physicians).**
- b. The parties shall coordinate the depositions of general causation experts.

defendant for purposes of these discovery limitations. Likewise, if more than one plaintiff is named, plaintiffs are treated as one entity for purposes of these discovery limitations.

⁶ To the extent disputes arise regarding the division of time between the parties for the deposition of treating physicians (three hours total absent agreement), I will address those disputes, rather than the assigned Magistrate Judge, Judge Eifert.

Insofar as multiple plaintiffs or multiple defendants use the same general causation expert or experts or general causation rebuttal experts, those experts shall be deposed only once on the issue of general causation. As to defendants' experts, plaintiffs are instructed to choose a lead questioner.

- c. The court encourages the coordination of depositions of specific causation experts to the extent there is overlap in the parties' use of specific causation experts by multiple parties.
- d. The court will consider modifications to the above limitations only upon good cause shown.

4. **Transferring to another MDL, requesting removal from the Wave and extensions of deadlines.**

- a. *Transfer of any case from this wave to any other MDL, whether by ruling upon a motion from plaintiff or defendants or sua sponte by the court, does not relieve the plaintiff or any remaining defendant(s) from the deadlines of this Docket Control Order.*
- b. If an Amended Short Form Complaint properly filed pursuant to Federal Rules of Civil Procedure 15(a), names a new party, then any party may move for an extension to the Docket Control Order.

B. MOTION PRACTICE.

- 1. **Daubert Motions.** For the filing of *Daubert* motions on general causation issues only, the parties are instructed to file one *Daubert* motion per expert in the main MDL (MDL 2327) instead of the individual member case.⁷ Each side may file one

⁷ If parties wish to adopt previous *Daubert* motions on general causation experts from other MDLs, they may file

response and one reply in the main MDL to each *Daubert* motion. This limitation does not apply to specific causation *Daubert* motions, responses and replies. Specific causation *Daubert* motions, responses and replies must be filed in the individual member cases. To the extent a challenged expert is both a general and specific causation expert, the parties must file a general causation motion in the main MDL 2327 and an individual specific causation motion in an individual member case.

2. **Page Limitations.** The page limitations provided in Local Rule of Civil Procedure 7.1(a)(2) apply to memoranda in support of all dispositive and *Daubert* motions, oppositions and replies. The court will not consider pleadings that exceed these limitations.

3. **Confidential Documents.** In the past, the court has permitted parties to file placeholder exhibits in support of *Daubert*, dispositive and other motions, responses and replies in the place of confidential documents that may be sealed and then, within five days, redact/dedesignate the documents or file a motion to seal. *The court will no longer permit this practice. Parties may no longer file placeholder exhibits.* The court expects leadership counsel for plaintiffs and defendants to resolve issues related to confidential designations well before the filing of motions. In the event there are issues related to sealing of confidential documents that the parties are unable to resolve, they must be brought to the court's attention in a consolidated manner as follows: Any consolidated motion to seal is due on or before **November 4, 2019**, and any response is due by **November 18, 2019**. Any reply is due by **November 25, 2019**. The court expects full compliance with Local Rule of Civil Procedure 26.4(c).

a notice of adoption with a copy of the previous filing (if necessary) they wish to adopt in the main MDL 2327.

4. **Locations of Filings.** With the exception of the general causation *Daubert* motions as outlined above, the parties are reminded that they must file dispositive and *Daubert* motions on specific causation, responses and replies in the applicable member cases only, not in the Ethicon MDL.

C. CASES READY FOR TRANSFER, REMAND OR TRIAL

1. **Venue Recommendations.** By no later than **November 5, 2019**, the parties shall meet and confer concerning the appropriate venue for each of the cases, and the parties are **ORDERED** to file joint venue recommendations by **November 15, 2019**. The parties' joint recommendation(s) shall identify cases where venue is in dispute. The court may then request briefing.

2. **Transfer and Remand.** The court, pursuant to PTO # 15 and 28 U.S.C. § 1404(a), will transfer each directly-filed case to a federal district court of proper venue as defined in 28 U.S.C. § 1391. In the alternative, pursuant to PTO # 15 and 28 U.S.C. § 1407, cases that were transferred to this court by the MDL Panel shall be remanded for further proceedings to the federal district court from which each such case was initially transferred.⁸

3. **Trial Settings.** If a case is to be tried in the United States District Court for the Southern District of West Virginia (either by agreement of the parties or where venue in the Southern District is determined to be proper by the court), the case shall be deemed trial-ready when discovery is completed and the court rules on the parties' summary judgment motions. The trial date for cases transferred or remanded to other

⁸ As expressly contemplated by PTO # 15, Ethicon does not waive its right to seek transfer—pursuant to 28 U.S.C. § 1406(a) or any other available ground—of any case to a court of proper venue, regardless of whether that case was transferred to or directly-filed in the Southern District of West Virginia. I entered identical PTOs in the remaining MDLs assigned to me.

federal district courts shall be set by the judge to whom the transferred or remanded case is assigned (including the undersigned through intercourt assignment).

D. COMMON BENEFIT TIME. I have entered a number of Pretrial Orders related to the eventual recovery of the cost of special services performed and expenses incurred by participating counsel in this and the other MDLs assigned to me. I direct the parties' attention to PTO # 18⁹, and its warning that "[n]o time spent on developing or processing purely individual issues in any case for an individual client (claimant) will be considered or should be submitted, nor will time spent on any unauthorized work." Pretrial Order No. 18, ECF No. 282, ¶ C. The court is of the opinion it is highly unlikely that any work performed by counsel on individual wave cases will be considered common benefit work. The court **DIRECTS** the Clerk:

1. To file a copy of this order in 2:12-md-2327 **and in the Ethicon Wave 13 cases identified on Exhibit A**; and
2. To remove any existing wave or inactive flags from the cases on Exhibit A and place the Ethicon Wave 13 flag.

It shall be the responsibility of the parties to review and abide by all pretrial orders previously entered by the court. The orders may be accessed through the CM/ECF system or the court's website at www.wvsc.uscourts.gov.

ENTER: September 10, 2019



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

⁹ I entered identical PTOs in the remaining MDLs assigned to me.

EXHIBIT A**PTO 346**

	Case Flags	Civil Action No.	Case Style
1	2327 WAVE 13	2:12-cv-01025	Dewey et al v. C. R. Bard, Inc. et al
2	2327 WAVE 13	2:12-cv-01978	Poole et al v. Ethicon, Inc. et al
3	2327 WAVE 13	2:12-cv-02215	Messer v. Cardinal Health, Inc. et al
4	2327 WAVE 13	2:12-cv-02937	Bowden v. Boston Scientific Corporation
5	2327 WAVE 13	2:12-cv-04789	Sobie et al v. Ethicon, Inc. et al
6	2327 WAVE 13	2:12-cv-06198	Labiche et al v. Nisbet et al
7	2327 WAVE 13	2:12-cv-07720	Barber v. C. R. Bard, Inc. et al
8	2327 WAVE 13	2:13-cv-00249	Pizzitola v. Ethicon, Inc. et al
9	2327 WAVE 13	2:13-cv-02651	Hanrihan et al v. Ethicon, Inc. et al
10	2327 WAVE 13	2:13-cv-05338	Risley et al v. Boston Scientific Corporation et al
11	2327 WAVE 13	2:13-cv-06188	Koch v. Boston Scientific Corporation
12	2327 WAVE 13	2:13-cv-06974	Lim v. Ethicon, Inc. et al
13	2327 WAVE 13	2:13-cv-12166	Wood v. Boston Scientific Corporation
14	2327 WAVE 13	2:13-cv-16175	Sutton et al v. Ethicon, Inc. et al
15	2327 WAVE 13	2:13-cv-16681	Bobczyk v. Boston Scientific Corporation
16	2327 WAVE 13	2:13-cv-21483	Schillachi v. Roberts et al
17	2327 WAVE 13	2:13-cv-30047	Perez et al v. Johnson & Johnson et al
18	2327 WAVE 13	2:13-cv-32407	Martinez et al v. Boston Scientific Corporation et al
19	2327 WAVE 13	2:13-cv-32948	Miller et al v. Johnson & Johnson et al
20	2327 WAVE 13	2:14-cv-01694	Hochstetler v. Ethicon, Inc. et al
21	2327 WAVE 13	2:14-cv-02952	Champion et al v. Ethicon, Inc. et al
22	2327 WAVE 13	2:14-cv-03865	Baker et al v. Boston Scientific Corporation
23	2327 WAVE 13	2:14-cv-04509	Myers v. Ethicon, Inc. et al
24	2327 WAVE 13	2:14-cv-06455	Batson v. Ethicon, Inc. et al
25	2327 WAVE 13	2:14-cv-07274	Garbarino et al v. Ethicon, Inc. et al
26	2327 WAVE 13	2:14-cv-09748	Westerfield v. Ethicon, Inc. et al
27	2327 WAVE 13	2:14-cv-10221	Parks et al v. Ethicon, Inc. et al
28	2327 WAVE 13	2:14-cv-12764	Heywood et al v. Boston Scientific Corporation
29	2327 WAVE 13	2:14-cv-14097	Rocha v. Ethicon, Inc. et al
30	2327 WAVE 13	2:14-cv-17181	Walters v. Ethicon, Inc. et al
31	2327 WAVE 13	2:14-cv-17183	Hoernis et al v. Ethicon, Inc. et al
32	2327 WAVE 13	2:14-cv-22546	Blair v. Boston Scientific Corporation
33	2327 WAVE 13	2:14-cv-22872	Larson et al v. Boston Scientific Corporation et al
34	2327 WAVE 13	2:14-cv-23146	Baggette v. Boston Scientific Corporation
35	2327 WAVE 13	2:14-cv-27080	Ontiberos et al v. Johnson & Johnson et al
36	2327 WAVE 13	2:14-cv-28383	Grover et al v. Ethicon, Inc. et al
37	2327 WAVE 13	2:14-cv-28384	Manes et al v. Ethicon, Inc. et al
38	2327 WAVE 13	2:14-cv-28490	Campbell et al v. Ethicon, Inc. et al
39	2327 WAVE 13	2:14-cv-28503	Bayer et al v. Ethicon, Inc. et al
40	2327 WAVE 13	2:14-cv-28515	Schulte et al v. Ethicon, Inc. et al
41	2327 WAVE 13	2:14-cv-28532	Russell et al v. Ethicon, Inc. et al
42	2327 WAVE 13	2:14-cv-28536	McCoy v. Ethicon, Inc. et al
43	2327 WAVE 13	2:14-cv-28539	Staigmiller v. Ethicon, Inc. et al
44	2327 WAVE 13	2:14-cv-28541	Lembke v. Ethicon, Inc. et al

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	Case Flags	Civil Action No.	Case Style
45	2327 WAVE 13	2:14-cv-28543	Wilson et al v. Ethicon, Inc. et al
46	2327 WAVE 13	2:14-cv-28545	Dicomio-Wilson et al v. Ethicon, Inc. et al
47	2327 WAVE 13	2:14-cv-29132	Cable et al v. Ethicon, Inc. et al
48	2327 WAVE 13	2:14-cv-29136	Wallin v. Ethicon, Inc. et al
49	2327 WAVE 13	2:14-cv-29146	Davis v. Ethicon, Inc. et al
50	2327 WAVE 13	2:14-cv-31166	Bunch v. Roberts et al
51	2327 WAVE 13	2:15-cv-01436	Davidson et al v. Ethicon, Inc. et al
52	2327 WAVE 13	2:15-cv-02531	Walker et al v. Boston Scientific Corporation
53	2327 WAVE 13	2:15-cv-02535	Beckman et al v. Boston Scientific Corporation
54	2327 WAVE 13	2:15-cv-05586	Milam v. Ethicon, Inc. et al
55	2327 WAVE 13	2:15-cv-05858	Dorantes et al v. Johnson & Johnson et al
56	2327 WAVE 13	2:15-cv-06033	Warhol v. Johnson & Johnson et al
57	2327 WAVE 13	2:15-cv-07038	Holm v. Ethicon, Inc. et al
58	2327 WAVE 13	2:15-cv-08091	Marshall v. Ethicon, Inc. et al
59	2327 WAVE 13	2:15-cv-09002	Gilliss v. Boston Scientific Corporation
60	2327 WAVE 13	2:15-cv-11284	Garrow v. Ethicon, Inc. et al
61	2327 WAVE 13	2:15-cv-12667	Furtado v. Ethicon, Inc.
62	2327 WAVE 13	2:15-cv-13135	Brosie et al v. Ethicon, Inc. et al
63	2327 WAVE 13	2:16-cv-01525	Arnold v. Ethicon, Inc. et al
64	2327 WAVE 13	2:16-cv-01835	Torres et al v. Ethicon, Inc. et al
65	2327 WAVE 13	2:16-cv-04193	Snyder v. Ethicon, Inc. et al
66	2327 WAVE 13	2:16-cv-05015	Carlson v. Mentor Worldwide LLC et al
67	2327 WAVE 13	2:16-cv-06001	Watts v. Ethicon, Inc. et al
68	2327 WAVE 13	2:16-cv-06626	Hilliard v. Boston Scientific Corporation
69	2327 WAVE 13	2:16-cv-08000	Fischer v. Ethicon, Inc. et al
70	2327 WAVE 13	2:16-cv-08237	Brown v. Ethicon, Inc. et al
71	2327 WAVE 13	2:16-cv-09513	Smith v. C. R. Bard, Inc.
72	2327 WAVE 13	2:16-cv-10467	Macknis et al v. Ethicon, Inc. et al
73	2327 WAVE 13	2:16-cv-11633	Madsen et al v. C. R. Bard, Inc.
74	2327 WAVE 13	2:16-cv-11877	Blackmon et al v. Johnson & Johnson et al
75	2327 WAVE 13	2:16-cv-11881	Brawley et al v. Johnson & Johnson et al
76	2327 WAVE 13	2:17-cv-00846	Copeland v. Ethicon, Inc. et al
77	2327 WAVE 13	2:17-cv-00881	Harris v. Ethicon, Inc. et al
78	2327 WAVE 13	2:17-cv-01121	McKimmy v. Ethicon, Inc. et al
79	2327 WAVE 13	2:17-cv-01903	Ward v. Ethicon, Inc.
80	2327 WAVE 13	2:17-cv-01986	Cobos et al v. Ethicon, Inc. et al
81	2327 WAVE 13	2:17-cv-01987	Dempsey v. Ethicon, Inc. et al
82	2327 WAVE 13	2:17-cv-04127	Hinnewinkel v. Boston Scientific Corporation
83	2327 WAVE 13	2:17-cv-04204	Juarez v. Ethicon, Inc. et al
84	2327 WAVE 13	2:17-cv-04334	DeAngelo et al v. Ethicon, Inc. et al
85	2327 WAVE 13	2:18-cv-01146	Hall et al v. Ethicon, Inc. et al
86	2327 WAVE 13	2:18-cv-01275	Breen v. Ethicon, Inc. et al
87	2327 WAVE 13	2:18-cv-01295	Gonzalez et al v. Ethicon, Inc. et al
88	2327 WAVE 13	2:18-cv-01550	Renteria v. Ethicon, Inc. et al

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	Case Flags	Civil Action No.	Case Style
89	2327 WAVE 13	2:18-cv-01551	Turner v. Ethicon, Inc. et al
90	2327 WAVE 13	2:19-cv-00164	Bowers v. Ethicon, Inc. et al
91	2327 WAVE 13	2:19-cv-00266	Deshon et al v. Ethicon, Inc. et al
92	2327 WAVE 13	2:19-cv-00299	Harrington v. Ethicon, Inc. et al